

## TAXICAB INDUSTRY

Taxicab drivers generally operate taxicabs under one of three situations. First, the taxicab drivers are acknowledged employees of the taxicab company. As an acknowledged employee, the taxicab company has the right to direct and control the services of the taxicab driver. Second, taxicab drivers perform services as either "percentage of their receipts" lease drivers or "fixed-fee" lease drivers. Drivers in this group may be performing services as either an employee of the taxicab company or as a self-employed person. Lastly, there are taxicab drivers who own and operate their own taxicabs and pay for their own license, permits and insurance. These drivers are usually in business for themselves.

### Who is an Employee?

In general an employer-employee relationship exists when a person who hires an individual to perform services has the right to exercise control over the manner and means by which the individual performs his or her services. The right of control, whether or not exercised, is the important factor in determining the relationship. See Information Sheet: "Employment" for the other factors used in making a determination of whether or not an individual is an employee or independent contractor.

### Fixed-Fee Driver as an Employee in the Taxicab Industry

There is a strong indication that taxicab drivers who lease taxicabs on a fixed-fee basis under all of the following circumstances are employees. Therefore, there is a high probability that the driver is incorrectly classified when he or she operates under the following circumstances and is classified as an independent contractor:

- Lease the taxicab on a daily basis or pay the lease fee at the end of every shift.
- Do not have a financial interest in a business and are not subject to a financial risk of loss.
- Are not involved in a separate and distinct business of their own.
- Perform work that is a regular part of the taxicab company's business.
- Can be terminated without liability by terminating or not renewing a lease agreement.

### Fixed-Fee Driver as an Independent Contractor in the Taxicab Industry

There is a strong indication that taxicab drivers who lease taxicabs on a fixed-fee basis under all of the following circumstances are independent contractors:

- Do not perform services under the direction and control of the taxicab company. They are free to conduct their business however they choose.

- Do not rely on the company for their customers. They secure their customers on their own with only an occasional referral from the company. They are not required to accept any referral.
- Prepay to lease a taxicab for a period of at least 28 days.
- Choose their shifts to drive the taxicab.
- The company provides advance notice of termination or nonrenewal of the lease agreement and/or stands liable for damages under the terms of the agreement. The lessee is liable for unpaid lease fees in the event they choose early withdrawal from the lease agreement. The agreement contains provisions for arbitration of disputes.

### Drivers who lease taxicabs based on a percentage of their receipts

The California Unemployment Insurance Appeals Board has held taxicab drivers to be employees under the following circumstances: the drivers pay a percentage of what they earn to a company in order to lease a taxicab. The taxicab company's income is dependent on how much revenue is generated by the driver. Therefore, in an attempt to increase income, a company will place controls and requirements on the drivers. The company may assign shifts, require the maintenance of trip sheets and pay for all advertising. At the same time, the drivers do not have a substantial investment in a business, are not subject to an entrepreneurial risk of loss, and do not have a distinct business of their own. The work the drivers perform is a regular part of the taxicab company's business and they can terminate or be terminated without any liability.

### Governmental Requirements

Local governments commonly mandate a taxicab company to exercise certain controls over taxicab drivers and the company's operation of vehicles. Such controls include, but are not limited to, dependent upon jurisdiction, driver dress codes, maintenance of trip records, restrictions on and requirements for the driver's use of the vehicle, response time goals and handling of dispatches, required color schemes, driver and company licensing, driver training, and a variety of requirements to assure transportation accessibility and public safety. Such mandates are not viewed as being evidence of control and are given no weight in making the ultimate determination.

However, if the company expands upon or exceeds the government mandates, then the requirements are considered in determining the amount of control exercised over the drivers.

## Major Court Case

In Santa Cruz Transportation, Inc. v. Unemployment Insurance Appeals Board [(1991) 235 CA 3d 1363; 1 Cal Rptr 2d 641], the court held that the drivers who paid the taxicab company a fixed-fee to lease a taxicab were employees of the company. Therefore, any fixed-fee lease driver who operates in a manner similar to the drivers described in the Santa Cruz Transportation decision would be an employee. Refer to the attached chart that lists the elements cited in the court decision and the weight we anticipate the California Unemployment Insurance Appeals Board and the courts will give to each.

Each key element as identified by the Court in the Santa Cruz Transportation, Inc., is analyzed and weighted by the Department in the chart below:

### KEY ELEMENTS IN THE SANTA CRUZ TRANSPORTATION CASE

The terms of the lease allowed the company to terminate the drivers.

The drivers could be terminated under the lease agreement if they did not maintain good relations with the public.

The lease agreement designated the time period when the shift began and ended.

The drivers were required to schedule their meal breaks with the dispatcher.

The drivers were prohibited from using the taxicab for personal use.

The drivers were required to accept charge slips from certain customers.

### WEIGHT GIVEN TO ELEMENTS IN THE SANTA CRUZ TRANSPORTATION CASE

The right to terminate at will is strong evidence of employment. The right to terminate conveys an inherent power of the company over the driver. The company could choose not to renew the lease of a driver without advance notice or liability. This would be strong evidence of an employment relationship and would be given **high** weight.

The company exercised control over the actions and behavior of the drivers by requiring them to always have a good relationship with the public. Failure to do so would result in the termination of the driver. With this right, the company can demand many things of the driver, and the driver, fearing loss of his or her job, would be obliged to follow such demands. **High** weight would be given to this element.

When the drivers are not allowed to set their own hours of work, the company is directing and controlling their services. This element is given **medium to high** weight.

When shift drivers lease a taxicab for 12 hours a day or 12 hour shifts over a period of a week and leases are allowed only when they are available for the shift requested, drivers cannot set their own hours and are not free to work when they choose.

If the dispatcher has control over when breaks are taken, this is strong evidence of control over the drivers and would be given **high** weight as an employment element. If the drivers are only required to give notice of breaks to the dispatcher, the element would be given a **low** weight.

The company controlled the use of the taxicabs by the drivers. This element would be given **medium** weight.

The company exercised control over the services by requiring the acceptance of alternative methods of payment. This was evidence that the company had the right to control the services, and that right was complete and authoritative. This alone is strong evidence of an employer-employee relationship and is given **high** weight.

The drivers were required to conform to a company dress code.

The drivers were required by the company to account for fares they received by a daily trip sheet and there was no evidence that the city required the drivers to maintain trip sheets.

The work did not require the expertise of a skilled professional.

The drivers did not advertise their services.

The taxicab company operates a fleet of cabs for public carriage.

The taxicab company's name was on the taxicab.

The lessee's work is part of the regular business of the taxicab company.

The taxicab company owned the taxicab.

The taxicab company owned the municipal taxicab license.

The drivers depended on the company's dispatcher for their livelihood.

The customers called the taxicab company for taxicab services; and the taxicab company arranged for the performance of the services.

A specific dress code, such as the wearing of uniforms, is given **high** weight and is strong evidence of employment. A general dress code, e.g., "neat appearance" would be given **low** weight.

Required reports are viewed as "review of work" which is strong evidence of the taxicab company's right to control the drivers. This element is weighted **high** as an indicator of employment. Having drivers complete city or governmental agency required reports is an element given **no** weight.

Operating a taxicab does not require a high level of technical skill and this element would be given **high** weight. A lower level of technical skill is strong evidence of employment.

If the company holds itself out as a taxicab service and does all advertising, this would be strong evidence that the drivers are working in the furtherance of the company's business and would be given **medium to high** weight.

The taxicab company was in the business of providing taxicab services, not leasing taxicabs. This element would be given **high** weight.

The company's name on the taxicab was an indication that the driver represented the taxicab company and he performed services in the furtherance of the company's business. This element would be given **medium to low** weight.

The drivers' services were performed as an integral part of and in direct furtherance of the company's business which indicates employment. This element would be given **high** weight.

The drivers did not have a significant investment in providing their services (i.e., own their cab, own medallions or the permits necessary to operate a taxicab, etc.). This was strong evidence of employment and is given **high** weight. A daily lease is not considered a significant investment and does not create an entrepreneurial risk of loss associated with an independent contractor.

The drivers operated under the company's license. This is an element receiving **high** weight as evidence of employment.

If the drivers are required to use the company's dispatcher in order to secure business, this is strong evidence that the company is controlling the services performed by the drivers. This element would be given **high** weight.

If the customers generally secure the services of the drivers through the company, this would be an employment element as the drivers depend on the taxicab company for business. If the drivers secure business on their own and could accept or reject referrals from the company dispatcher, this would be an indication of independent contractor status. This element would receive **high** weight.

Equal Opportunity Employer/Program. Auxiliary services and assistance available to persons with disabilities.